United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-6053

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

To be argued by
James H. Crouch, pro se.

B

JAMES H. CROUCH,

PLAINTIFF .

VS

Docket Number
76-6053 P/S

73 CIV. 2703(HRT)

UNITED STATES OF AMERICA and Casper W. Weinberger,
Secretary of Health, Education and Welfare,

Defendants.

TO THE UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

BRIEF FOR THE PLAINTIFF

JAMES H CROUCH

160 West 97th Street

New York, N. Y. 10025

Plaintiff pro se

to: Hon.Judge Lee P. Gagliardi
United States Courthouse
Foley Square
New York, New York 10007

V. Pamela Davis, Esq.
Assistant United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

TABLE OF CONTENTS

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JAMES H.CROUCH, PLAINTIFF. VS UNITED STATES OF AMERICA and Casper W. Weinberger, Secretary of H ealth, Education and Welfare, Defendants.	Docket Number 76-6053 73 CIV.2703(HRT)

TO THE UNITED STATS COURT OF APPEALS, SECOND CIRCUIT.

BRIEF FOR THE PLAINTIFF

PRELIMINARY STATEMENT

I, James H. Crouch, plaintiff herein (pro se) appeals from the supplimentary order of the Southern Distict Court, New York City, New York State (Gagliardi) entered on February 18,1976,(a copy attached hereto as EX.1). The court had entered two (2) prior orders on June 19, 1975, and October 22, 1975 Respectively, (attached hereto as Ex.2 and Ex.3) ordering The Secretary Of Health, Education And Welfare to make payment of benefits, pursuant to the courts (Tyler H.R.) order which it had previously ordered paid, entered on November 11, 1974 (attached hereto as Ex. 4).

The order entered on February 18, 1976 (Ex.1) relating to the resubmitted notice of settlement, (a copy attached hereto as Ex. 5). The court reversed itself, and denied the plaintiff the benefits it (Gagliardi,L.P) had previously ordered paid (Ex. 2 and Ex.3). The supplementary notice of settlement (Ex.5) was resubmitted for signature which the court (Gagliardi,L.P) refused to sign. HEW posed opposition for the first time on December 18,1975, Res Judicata had automatically been invoked, (a copy attached hereto as Ex. 6)

On two different occasions, December 11, 1974, and July 19, 1975, both, 30 day appeal periods had expired (Ex. 4 and Ex.2) respectively. The Secretary on both occasions failed to seek Judicial review pursuant to Sect. 205(g).

The plaintiff proved a disability upon Judicial review on July 22, 1974, (based on the same medical evidence submitted to the Secretary by plaintiff, (a copy attached hereto as Ex. 7) memorandum opinion #40992).

The Secretary had previously denied three (3) prior applications; on December 9, 1966, October 26, 1967, and November 25, 1972 respectively, without submitting any medical evidence in support of its denials.

At least on one occasion the Secretary tampered with one Doctors report submitted by the plaintiff. (a copy attached hereto as Ex.8).

In view of the Secretary's and the Court's treatment of this claim, the facts can only be recaptured by reading of the entire record. The plaintiff has included a number of excerpts therefrom in this brief.

THE FACTS

The facts,insofar as they are necessary to this court's consideration of the questions of law raised by the plaintiff, will be presented in connection with the respective points to which they relate.

POINT ONE

PLAINTIFF MET ALL REQUIREMENTS FOR DISABILITIX PURPOSES IN 1966 medically ANB CLINICALLY.

In this instant case, the burden of proof,in order to establish a period of disability. Plaintiff did indeed suffer a disability of a severe level to preclude the plaintiff from participating in gainful activity pursuant to 42, U.S.C., plaintiff was qualified for social security insurance disability benefits for the period February 1966 long before plaintiff was released from Matteawan State Hospital in 1969.

Plaintiff had submitted medical evidence (doctors reports) to the Secretary of Health, Education and Welfare (herein after referred to as HEW)

as required by law.[1/] On two (2) prior applications HEW, denied both. Plaintiff still another application on June 29,1970 which all administrative remedies

---

1/ As required by law,the report was submitted and signed by two qualified psychiatrists (Alan Holden, M.D., and A . Leonard Abrams, M.D.) of Bellevue Psychiatric Hospital.Designated by New York Supreme Court(for a clinical evaluation) New York, New York., examined plaintiff and designated the plaintiff as a suitablecandate for commitment to a mental hospital. On June 22,1966 plaintiff entered Matteawan Hospital, where again his condition was diagnosied,as paranoid.
From notes of various doctors who examined plaintiff from the date of his entry at Matteawan, plaintiff remained on various medications to maintain his emotional stability.
On October 8, 1968 the hospital reported," This patient is not employable in the community at the present time. As stated before he is rather withdrawn, preoccupied, and although he works in the clothes room he is very sensitive to human contact and occasionally would get involved in fights. At present his mental condition is such that in case the criminal charges against him would be dismissed, we would request authorization for his admission to a civil hospital for further care and treatment."
"The evidence fails to support the conclusion of the Secretary that plaintiff's impairment was not of a level of severity to preclude the performance of substantial gainful activity." (Ex. 7).

were exhausted.

Upon judicial review, (Ex.7), the court concluded[2], the purported evidence

---

[2] " Accordingly, upon marshalling the evidence, medical, the ultimate finding must be that plaintiff suffered a mental disability of a severe level during the period from February, 1966 until he was discharged from Matteawan in September, 1969. (Ex. 7).

---

submitted by HEW fails to support the Secretary. HEW never submitted any medical evidence of its own to support its unjust denials for a period of disability and disability insurance benefits, the applications of 1966, 1967, and 1972 which is the only valid application since it is the application that the remedies were exhausted there on.

What HEW presented as evidence was an alteration of the plaintiff's Doctor's report[3] that was submitted to HEW on September 19, 1970 on plaintiff's behalf.

---

[3] "On September 19, 1970, Dr. Osler submitted a second report in which he indicated that plaintiff's condition should be classified as an obsessive compulsive neurosis. He also stated that plaintiff was not psychotic and could

engage in some sort of work which did not involve contact with many people and that his condition had remained stable for some time." (Ex.7).

During a consultation visit with Doctor Osler on February 15, 1975, The Doctor, while reading the court's opinion (Ex.7), observed that his report had been reworded, giving the report a totally different meaning. He said to plaintiff, "Mr. Crouch, this is a libelous act and a gross infringment upon my reputation as a Doctor". Doctor Osler was very annoyed, so much so that he forwarded a note to my former attorney, Sara Halbert, setting forth the alteration of his report which had been submitted on plaintiff's behalf. (With former counselor's permission, a copy of the aforemention note is attached hereto as Ex.8). Doctor Osler further told plaintiff, "If further clarification is necessary or required, he would submit still another report in simple language setting forth exactly what he meant in his report of September 19, 1970 to avoid any further complications in order to set the record straight".

Doctor Osler views the action perpertrated by HEW as a personal affront. The plaintiff agrees with(his)Doctors views. The plaintiff prays that this courts views are the same. This flagrant act by HEW definitely influnced the courts decision (Ex.7) 4/ which prejudiced plaintiff's claim for benefits to which plaintiff is entitled (in continuous)thereto.

4/ The scope of this review is limited by 42 U.S.C. sect. 405 (g) which states that the "finding of the Secretary as to any fact if supported by evidence to support the examiner's finding that plaintiff was not disabled from 1966 through 1971, his decision must be affirmed, absent errors of law. Richardson v. Perales, 402 U.S. 389 (1971), Gold v. Secretary of Health, Education and Welfare, 463 F. 2d 38, 41 (2d Cir. 1972).
This court has read and considered the transcript and the briefs filed in this case, and has concluded that the Secretary's decision that Plaintiff failed to prove disability is not supported by substantial evedence.
The Secretary makes essentially two arguments in support of his motion to dismiss. First he claims that the doctrine of res judicata bars any benefits through November 27, 1968, when the hearing examiner denied a previous application by plaintiff for benefits based upon the same disability alleged in his present application. In regard to the

period of time after November 27, 1968, it is argued that the Secretary's decision is supported by substantial evidence and is thus entitled to affirmance. For the purpose of this motion, plaintiff's claim can be divided into three time periods: (1) the period from February, 1966 through November 27, 1968, which defendant claims is barred by res judicata; (2) the period from November 27, 1968 through September, 1969, during which plaintiff remained in Matteawan; and (3) the period after September, 1969 to September 30, 1971, following plaintiff's discharge from Matteawan.

In regard to the third period of time after September, 1969 through September 30, 1971, the sole question is whether there was substantial evidence to support the HEW determination. 42 U.S.C. Sect.405 (g). There is no question with regard to the period of time following plaintiff's discharge from Matteawan that the Secretary's decision is supported by substantial evidence. Considerable evidence exists to show that plaintiff's mental condition improved substantially in 1970. Although plaintiff continued to experience emotional problems, they were not of the level of severity to qualify him for disability benefits. In his continuing observations of plaintiff, Dr. Osler found no psychosis and indicated "that claimant is capable of engaging in some sort of work, where he does not have to come in contact with many people." The fact that plaintiff has attempted unsuccessfully to find a job has no relationship to his entitlement to disability benefits. The test of disability is the inability to work in gainful employment in the national economy, not the inability to find a job. Whiten v. Finch, 437 F.2d 73 (4th Cir. 1971); Woods v. Finch, 428 F.2d 469 (3d Cir. 1970).

Accordingly, with regard to the period of time after September, 1969 through September 30, 1971, I find that the Secretary's decesion is supported by substantial evidence.

HEW's prior decisions were not without error.

It is plaintiff's position that the mental impairment has prevented the plaintiff from participating in gainful activity. A few former co workers have in addition to plaintiff, sought employment on plaintiff's behalf. Itis the same old story; once the potential employer ascertains plaintiff's previous mental breakdown, it is either"I will call you", or "nothing is available".

Plaintiff's former employer, "United Press International", and former union, "United Telegrapher Workers Union", both collectively have and are in continuous, excluded plaintiff from work specifically because of the mental impairment.[5/] HEW's guidelines dictate that although an individual has recovered, provided the impairment had prevented him from engaging in substantial gainful activity for a continuous period of at least 12 months is entitled to benefits.[6/]

"These are excerpts of answers to another complaint":

5/ (A) "As for a fifth affirmative action
Twentieh: plaintiff is estopped from asserting and has waived any claim against UPI with respect to events on or about December 9,1969 because he sought and a social security disability benefit confirmed by an order and judgment of this court on are about July 19,1974 on the grounds that he was disable due to a mental illness at all relevent times up to and including September 30,1971, of a nature that precluded him from engaging in any work which involved contact with many people."

(B) "Eight Defense
Plaintiff is estopped from asserting and has waived any claim against the Union with respect to the events on or about December 9,1969 because he sought and obtained a Social Security Disability Benefit confirmed by an order and judgment of this court on are about July 19,1971 on the grounds that he was disable due to a mental illness at all relevent times up to and including September 30, 1971, of a nature that precluded him from engaging in any work which involved contact with many people."

6/ Chapter 6, Social Security Handbook, under the heading "Factors In Evaluating Disability" (SSI-135) Fourth edition:

603.THE REQUIREMENT THAT THE IMPAIRMENT MUST HAVE LASTED OR CAN BE EXPECTED TO LAST FOR A CONTINUOUS PERIOD not less than 12 months (Par.507)(A)) may be met even though recoveryis expected to occur at some time after the 12-month period. It may be met even if the application for disability benefits is filed after the individual has recovered,provided the impairment had prevented him from engaging in substantial gainful activity for a continuous period of at least 12 months.
Underlined for emphasis.

IN THIS INSTANT CASE IT IS FACT. By two(2) different entities,plaintiff has been excluded from participating in gainful activity. Therefore, this places the plaintiff squarely in a two(2) fold dilemma; the former Employer and Union has specifically excluded plaintiff from participating in gainful activity, based the allegations and inuindos setforth in full,(see note 5). On the other hand,HEW's contention is that no impairment ever existed, denying th plaintiff a period of disability, further, out of sheer desperation went to the extent, in an attempt to justify its unjust denials,perpetrated a despicable act by altering the plaintiff's Doctor's report (see note 3).

The plaintiff's position is the pursuit of issues against the former Employer and Union (when all of the many efforts by plaintiff and other trying to get the plaintiff back into gainful activity failed,by law plaintiff resorted to the courts, actions pending.) and the pursuit of the herein this instant case, they are parellel, relative and related (see notes 5,6,&7) but

they are none conflicting.

Plaintiff beleives that this court has no other alternative but to direct or order the secretary to effectuate a"consultative examination"pursuant to sect. 617.(B)(C)."at government expense maybe necessary for one or more of the folling reasons: 7/ It is a fact, HEW has never submitted any medical evidence

---

7/ Chapter 6. Social Security's Handbook (SSI-135) Fourth edition 1969.Under the heading " FACTORS IN EVALUATING DISABILITY".

(B) " To obtain where it is considered necessary for sound adjudication, highly technical or specialized medical data not otherwise available,when a State agency medical consultant considers it necessary."

(C) " To resolve a meterial conflict or inconsistency in the evidence".

---

in support of any and or all social security's law or laws which HEW purports to be relative or related to the issues herein.

It is the plaintiff's position; When either party makes application of any law, without evidence in support thereto, the application made thereto are without merit and are therefore for whatever purpose is of no probative value. They (laws) can not stand.

As in this instant case, HEW altered the evidence (see note 3) inwhich prejudiced the plaintiff's claim, as a result, influenced the court's (Tyler,H.P.) (Ex.7), the court found, the evidence submitted by plaintiff were not binding on the Secretary 8/. The Secretary must furnish its own evidence to support its position.

Plaintiff has shown, clearly and conclusively that HEW tampered with the

---

8/ (A). "July 8,1966 through October 1,196, the Veteran's Administration awarded plaintiff 100% disability benefits for his mental disability. From October 1, 1970 until the present, plaintiff has been diagnosed as being entitled to 70% disability benefits(*). Admittedly, these awards are not binding on the Secretary. The findings, however, are the results of psyshiatric evaluations and are entitled to some weight. DePaepe v. Richardson,464 F.2d 95 (5th Cir. 1972).

(7) continuoed, pg.8.

(B)(*). " YOUR service connected condition continues to be evaluated 70% aisabling from 10-1-70,and your combind evaluation is 70% disabling from 10-1-70. However,you are granted total disability benefits from that date. THIS DECISION GRANTING YOU DISABILITY BENEFITS IS BASED ON THE EVIDENCE WHICH SHOWS YOU TO BE PHYSICALLY UNABLE TO ENGAGE IN SUBSTANTIALLY GAINFUL EMPLOYMENT. Any change in your employment must be reported."

The Veterans Administration award letter dated October 2.1970 (a copy attached hereto as Ex.12)

(C). "considerable evidence exist to show that plaintiff's mental condition improved in 1970. Although plaintiff continued to experience emotional problems, they were not of the level of severity to qualify him for disability benefits. In continuing observation of plaintiff, Dr.Osler found no psychosis" (the evidence tampered with by HEW (see note 3) (Ex.8))"and indicated claimant is capable of engaging in some sort of work,where he does not have to come in contact with many peoples. The fact that plaintiff has attemped unsucessfully to find a job has no relationship to his intitlement to disability benefits",(see note 8(B)) also (note 6)."The test of disability is the inability to work in substantial gainful employment in the national economy" (see note 8(B) " not the inability to find a job."(see notes 5(A)(B),(note 6) and (8(B))).

" Accordingly,with re gard to the period of time after September,1969 through September 30,1971,I find that the secretary's decision is supported by substantial evidence".(Ex.7).

EVIDENCE submitted by the plaintiff which influenced the courts decision,(Ex.7) in denying plaintiff the benefits sought.(see note 8(A)(B)and(C).

The plaintiff disagrees with the court's finding based on the following;aPlaintiff is the only party that has submitted any medical evidence herein this complaint from the very onset of these proceeding. b. HEW tampered with the evidence that was submitted. c. the fact, the medical evidence submitted is not binding on the secretary. d. The court's finding does not conform with the proof, medical evidence presented by plaintiff and HEW has presented none. e. What law or laws that require or mandate that HEW must submitt medical evidence?. f.What law or laws that exempt HEW from furnishing its own medical evidence?. In this instant brief,plaintiff has clearly shown atleast one of HEW's guidelines which dictate that HEW must do so.(see note 7)

The plaintiff makes application to this court, in this istant case, due to its unusual and unique circumstances, and the inconsistency of evidence (see note 3,note 4, note 5,note6, note 7 and note 8(A)(B) and (C) to amend the third period (Ex.7),(Ex.4) and grant the benefits sought herein which

plaintiff is entitled thereto and rightfully deserve, pursuant to sect.222(c)(1)(4),42, U.S.C. (see notes5)(6)(7) and((8)(A)(B)(C)).

The plaintiff prays that this court gives all of the above foregone its utmost consideration, and argrees with plaintiff upon review and order HEW or direct the same, to perform any and all administrative functions that this court deem proper and appropiate, in order to cut off this indefinate trial seeking resolution, (10 years).

POINT TWO

PLAINTIFF BELIEVES THE COUURT EXCEEDED ITS AUTHORITY WHEN IT TERMINATED THE BENEFITS 8 MONTHS BEFORE THE APPLICATION SEEKING THE BENEFITS THEREFOR. THE CLAIM WAS ADJUDICATED JULY 22,1974.

Since benefits are only payable 12 months retroactively, the application filed on June 29.1970,is the only valid application seeking the benefits herein. The two(2) prior applications of December 19,1966 and October 25,1967, were voided upon the initial denials by HEW. HEW could not execut the order of November 11,1974,(Ex.4) legally based on the fact that benefits are payable 12 months prior to the date the application filed date which is June 29,

1970, 8(eight) months after the court (Tyler,H.R.) terminated the benefits on September 30,1969, June 29, 1970 the application was filed seeking the benefits herein.Further, whatever and however HEW attempted to execute the subject order of November 11,1974,(Ex.4), if any reference thereto the two(2) prior application in the process, whater or however the actions was illegal.

Plaintiff's beliefs and reasons that he believes that the court(Tyler,H.R.) exceeded its authority when it terminated the benefits as of September 30,1969 (Ex.7),(Ex.4); 1. Any and all actions by the court in adjudicating the claim herein must relate to the application of June 29,1970; i.e. the decision of July 22,1974, the order of November 11,1974, the order of June 19,1975 and October 22,1975, January 6,1976 and the prejudicial order of February 18, 1976, none of the above court's actions relates to the application of June 29,1970, further,nor did the courts decision reflect the facts; 1. that all of the administrative remedies was exhausted based on the application of June 29,1970. 2.nor does it reflect the fact that the initial denial of the the subject application June 29,1970. 3.and the fact that the court(Tyler,H.R.) did not consumate the adjudication of the claim based thereon the application of June 29,1970.

continued on next pg.

The court,(Tyler, H.R.) while marshalling the evidence in making his decision, stated and plaintiff quotes " Accordingly, with regard to the period of time after September ,1969 through september 30,1971,(the expiration date,if plaintiff had to establish a period of disability by that date, otherwise plaintiff would never be entitled to any benefits since HEW also denied a freeze of the account.) " I find that the secretary's decision is supported by substantial evidence."(Ex.7)(see note 7), The courts finding WERE based specifically thereon plaintiff's Doctor's report of September 19,1970,(Ex.7)(see note 3) setforth more in full in point one. HEW tampered with the subject report of September 19,1970, which is a criminal despicable act that is punishable by fine or imprisonment or both.(see note 3) and (Ex.8)

It is plaintiff position, the plaintiff has shown clearly and conclusively that HEW did indeed tamper with the plaintiff's evidence and treated it as is if it was its own,is of no probative value herein in this claim and this court could and should hold HEW in contempt of the lower court.(see note 3) and (Ex.8).

The court's finding was based on that specific piece of evidence, thusly the decision rendered is illegalsince a crime was perpetrated was direct

cause that the court(Tyler H.R.) made the decision terminating the benefits as September 30,1969,among other setforth more in full in this instant point.

Since HEW pepetratied the despicable act outlined more in full in the above two(2) paragraphs,further, the defendants Casper W.Weinberger, the Secretary of Health, Education and Welfare, and the Social Security Administration denied the plaintiff his rights to disability insurance benefits and to the full and equal benefits of all laws for the security of persons and property, i.e. the benifits sought herein, as is enjoyed by other individuals disability claimants in violation of Title 42 U.S.C. § 1981, based on the illegal termination of benefits by the court, and the despicable pepetrated by HEW, tampering with the evidence is also illegal, AND UNconstitutional.

Plaintiff states again and says,makes application to this court herein this instant proceeding,this instant case, due to its unusual and unique set of circumstances, and inconsistency of the evidence (see note 3)(note 4) (note 5)(note 6)(note 7) and (note 8(A)(B)(C)) and (Ex.8)(Ex.7)(Ex,4) amend the third period (Ex.7)(Ex.4) and grant the benefits sought herein which plaintiff is therefor entitled thereto and legally so. This plaintiff prays

that this court,instant gives all of the above foregone its utmost consideration when marshalling the evidence upon review, direct and order HEW to perform any and all administrative functions that this court deem proper and appropiate.

POINT THREE

THE SECRETARY OF HEALTH,EDUCATION AND WELFAPE HAS FAILED TO FULLY COMPLY WITH THE COURT'S ORDER OF NOVEMBER 11,1974

The secretary submitted to the court on November 8,1974 the notice of settlement and judgment(Ex.4) pursuant to the court's order of July 22,1974 (Ex.4) Hew drafted the order,exempting the plaintiff from the 6 months waiting period. The certificate does not reflect and was certified payment from September 1966 through September 30,1969.

For argument sake only, (This statement is by no means a concession!!!), HEW Paid the benefits from September,1966 through September 1969, (seven months benefits withheld). Even if six months waiting were granted, plaintiff would still be due one months benefits.

However it is viewed, HEW has not fully complied with the subject order

(Ex.4). HEW failed to seek review within the prescribed time limit pursuant to sect. 205(g) 42 U.S.C.. At this point res judicata was invoked.

On may 19, 1975, plaintiff filed an affidavit and motion asking the court to enter a supplementary order directing HEW to make full payment pursuant to the order of November 11, 1974,(Ex.4). HEW submitted an affidavit on May 23, 1975 alledging that the benefits had been paid in full,(Ex.4), (attached hereto as Ex.11). This allegation is not a true fact.

On June 19, 1975, the court (Gagliardi) indeed issued a supplemental order directing HEW to pay the benefits,(Ex.2). Again HEW failed to seek judicial review; res judicata invoked a second time. On October 22, 1975, the court entered an order submitted October 21, 1975 by plaintiff's former counsel Sara Halbert,(Ex.3).

Plaintiff submitted a supplemental notice of settlement pursuant to (Ex.2), On December 15, 1975; and on December 18, 1975, for the first time, defendants submitted an affidavit in opposition to the seven months unpaid

benefits, (attached hereto as Ex. 12) pursuant to the order of November 11, 1974 (Ex.4), and the order of June 19, 1975 (Ex.2). Res Judicata had been invoked twice since HEW failed to seek judicial review pursuant to sect. 205(g) on both occasions. Thusly, HEW is barred from any further opposition to said seven months benefits that the supplemental notice of settlement of December 15, 1975 submitted therefor the seven months unpaid benefits that HEW was directed to pay based on the orders of November 11, 1974 (Ex.4), and June 19, 1975 (Ex.2). Therefore, the affidavit in opposition that was submitted on December 18, 1975 is of no probative value. Further, the section of law that the Secretary made application thereto (223 (c)42 U.S.C.) is not applicable in this instant case. It is a new mandate enacted in 1973 9/ and does not relate to the period in question, (February 1966 through September 1969), nor is it relative.

9/ Passed June 14, 1973
Ninety Third Congress of the first session, the third day of January 1973 enacted.

On January 6, 1976, the court entered a memo of endorsement,(relative to the supplemental notice of settlement of December 15, 1975). Plaintiff's former counsel sought to secure a copy of subject endorsement on January 15, 1976. Former counsel received a note from the court's (Gagliardi) chamber's (a copy attached hereto as Ex. 13), indicating that the memo could not be found. It is not on micro film, nor is the document in the file. On two occasions, the plaintiff searched for the document. Not only could the memo of endorsement not be found, also the supplemental notice of settlement of December 15, 1975 could not be found. Former counsel forwarded a letter to the court (Gagliardi) (a copy attached hereto as Ex. 14). The letter is self explanatory.

Plaintiff resubmitted the supplemental notice of settlement on February 13, 1976 (Ex. 5). The court refused to sign, and treated the resubmitted notice of settlement as a motion as per suggested by HEW, plaintiff quotes"---
5. According to the proposed supplemental judgment, plaintiff has received the benefits to which he is entitled, i.e. benefits from September of 1966 to September of 1969. What he seeks by this motion are benefits during the

statutory "waiting period", i.e. benefits from February of 1966 through August of 1966, to which he is not entitled". (Ex.6), And treated the re-submitted notice of settlement (Ex.5) as such. The court (Gagliardi) further, as per suggested by HEW, plaintiff quotes" Wherefore the motion to settle a supplemental judgment should be denied". (Ex.6), and the court denied plaintiff the relief sought therein. When so denying, the court (Gagliardi) entered a memo endorsement and order on February 18, 1976.(Ex.1), the order appealed therefrom. The court failed to take under consideration the fact that it was the court (Gagliardi) that entered the order of June 19, 1975, (Ex.2), ordering and directing HEW to make payment of the seven months benefits from February 1966 through September 1966, and not as counsel for HEW stated, "February 1966 through August 1966. Further, counsel for the defendants fails to realize that it was she who submitted to the court the order of November 11, 1974 (Ex.4) for signature dictating the terms of the subject order of settlement (Ex.4), plaintiff quotes the subject order;

"ORDERED, ADJUDGED AND DECREED, that plaintiff, James H. Crouch, have partial judgment against the defendant, Secretary of Health, Education and Welfare, setting aside the decision of the Secretary in part and ordering

that plaintiff be granted a period of disability and disability benefits from February, 1966 until his discharge from Matteawan Hospital in September, 1969 and that defendant have partial judgment against the plaintiff affirming the decision of the Secretary in part and denying plaintiff a period of disability and disability benefits from the date of his discharge from Matteawan in September, 1969 until September 30, 1971., Dated New York, New York November 8, 1974."

The plaintiff position on the above is,plaintiff herein has not contended that the court's decision of July 22,1974, as stated by counsel for the defendants alleges,it the contention of the plaintiff is based on the following; plaintiff quotes from the last page of the decision of July 22,1974 (Ex.4) the court(Tyler) " Iconclude that plaintiff's disability falls within the coverage of the act for the period of February, 1966 through September 30,1969."

" The evidence fails to support the conclusion of the secretary that plaintiff's impairment was not of a level of severity to preclude the performance of substantial gainfull activity." andfurther stated;

" Accordingly,the government's motion is granted in part and denied in part. Settle order accordingly on notice."

The plaintiff states and says that it was the counsel for the defendants who,on November 8,1974 (Ex.4) submitted to the court the notice of settlement and judgment order for signature which the court (Tyler) signed the subject order as dictated by HEW, exempting the plaintiff from the six (6) months waiting period, on November 11,1974 the order was entered, and neither party sought judicial review during the appeal period of thirty days pursuant to 205 (g),42 U.S.C., at this point in time RES JUDICATA was invoked, And on January 29,1975, defendants certified allegedly pursuant to the afomentioned order (notice of settlement and judgment) of November 11,1974(Ex.4) withholding seven(7)months of benefits(Ex.9). and on may 15,1975 filed,plaintiff an affidavit and motion seeking those benefits (7 months),no opposition was posed at that time. The court(Gagliardi) entered a memo endorsement on July 19,1975 (Ex.2) granting the benefits and denying the dependent benefits without prejudice. The defendants affidavit of may 23,1975(exll) alleges and plaintiff quotes par.7 and 8. " The Honorable Harold R. Tyler, Jr. affirmed the Secretary in part and reversed him in part awarding plaintiff the sum of $4,840.00 for disability benefits for the period of February 1966 through

September 30, 1969." " I am informed by plaintiff's attorney that plaintiff has received a check for that amount less the amount of the attorney's fee applied for in the pending motion."

The allegation set forth in par. 7 and 8 is only partially true, the allegation "February 28, 1966" is not true. The court (Tyler) dictates "coverage of the act for the period of February, 1966", The order of November 11, 1974 also reflects "February, 1966". This is an attempt by HEW to compensate for errors perpetrated. The amount HEW alleges as full $4,840.6 is less the amount due $809.2, for the period from February, 1966- September 30, 1969 the currect amount should be $5649.8, and the dependents benefits is in the amount of $2,824.9, the total amount withheld less paid the attorney is $3634.1.

The defendants for the first raised a new issue, i.e. the six(6) months waiting period in an affidavit of December 18, 1975 after RES JUDICATA had beeninvoked a second time on July 19, 1975 based on the order of June 19, 1975. and when plaintiff submutted the supplemental notice of settlement and judgment on December 15, 1975 based on the order of June 19, 1975(Ex.2), as a result of the affidavit of HEW's of December 18, 1975(Ex.6) the court (Gagliardi) refused to sign and made an unusual move by placing, on the docket

sheet unsigned. On February 13,1976 the plaintiff resubmitted the notice of settlement and judgment,supplemental, the court then treated the resubmitted notice of settlement and judgement as a motion and denied the benefits sought thereon,the seven(7) monthsbenefits.This action by the court(Gagliardi) reversed it self and the stated reasons is " This court finds that the plaintiffwas found by Judge Tyler to have been disable within the meaning of the Social Security Act begining with February,1966 which is precisely what is required by the statute and Judge Tyler's order." ,the memo endorsement and order (Ex.1)

The plaintiff disagrees emphatically. HEW on December 18,1975 (Ex.6) seeks insidiously to amend the order of November 11,1974 which it had exempted the plaintiff from the six(6) months waiting period. The court(Gagliardi) himself had ordered paid in the order of June 19,1975(Ex.2) which he granted the benefits sought therefor. Further, someone unknown by the plaintiff, filed an affidavit and motion on March 18,1976,alleging that it was plaintiff (misrepresntation) releaving former counsel from this instant case,and on the same day the court(Gagliardi) filed a memo endorsement granting the motion, onMarch 18,1976 neither the affidavit nor memo endorsement can be found.

It is the plaintiff position, the actions HEW seeking to amend the order of November 11,1974 which HEW exempted plaintiff from the six(6) months waitingperiod (Ex.4), the court granting the order to make payment the order of June 19,1975 (Ex.2) ,and the court granting HEW the amendment Sought after RES JUDICATA had been invoked twice pursuant to 205(g), and denying plaintiff benefits sought which it had granted and releaving former counsel of plaintiff without notifing plaintiff of the act. Plaintiff finds all of the above to be abitriary and capricious and unconstitional.

If the amendment of the order of November 11,1974 is up held by this instant court,then this court must amend the third period therein (Ex.3) September 30,1969 a date 8 months before the application was filed therefor, and the fact that the defendants thmpered with the evidence which influenced the denial of the benefits September 30,1969,would be gross injustice imposed on an individual that least deserveing.The order of February 18, 1976 is the order appealed therefrom.

The plaintiff is not a lawyer a layman seeking benefits the he believes he is rightfully due, and under thses most usual circumstances, they are unique and plaintiff has presented the factsreletive to the

issues herein to the best of his ability and relies on the honesty and inttegrity of this court to protect the plaintiff's rights pursuant to the laws that govern and upon this court's review, direct and order that it deem proper and appropriate,the plaintiff's faith is in your hands.

POINT FOUR

THE SECRETARY OF HEALTH,EDUCATION AND WELFARE SEEKS AND APPLICATION FROM DEPENDENT CHILD ON GROUNDS THAT ARE NONE RELTIVE TO THE PERIOD IN QUESTION.

Plaintiff upon filing the application seeking all of the benefits herein, on June 29,1970,specifically asked at the time fo filing --if an application for my dependent son would have to be filed separate on his behalf? the clerk answered " no since the dependent was under age,the dependent's benefits would automatically paid" it was the definate intention to file such application on that same date. HEW now alleges that the dependent is now 18 years of age and would have to file him self. this is incredible, I the plaintiff the natural parent, had beeh adjudicated incompetent,no comittee,no guardian and no fidicuary.absolutly no one to protect the plaintiff's interest. The Subject

child was between the ages of nine(9) and thirteen(13) and during that period HEW denied two(2) applications seeking the benefits herein,filed on plaintiff behalf by the Director of th Hospital to which plaintiff was confined. and in plaintiff's affidavit and motion of may 15,1975 sought those benefits therein said affidavit. The court(Gagliardi) denied the benefits without prejuce,before plaintiff could submitt an affidavit to the court asking for an order to direct HEW to accept an application for the dependent from plaintiff as if the applicatinn was filed as of June 29,1970. The Court(Gagliardi) entered and and order denying the plaintiff the plaintiff's benefits sought on February 18,1976(Ex.1) the prejudice order appealed there from. This denial preclude the plaintiff from making any future application therefor those benefits. what happens to those benefits? they must be paid,therefore plaintiff makes application to this court to direct HEW to accept and application from plaintiff for those benefits.

Wherefore,the plaintiff prays that this court considers the humble request, and grant said request when evaluating the issue upon review and dictate what it deems proper and appropiate.

CONCLUSION

THE DENIAL APPEALED FROM SHOULD BE REVERSED AND THE BENEFITS SOUGHT HEREIN BE GRANTED BECAUSE OF INCONSISTENCY DOCUMENTED STATEMENTS BY THE DEFENDANTS RELATING TO THE SETTLEMENT AND JUDGMENT AND ORDER OF NOVEMBER 11,1974 (Ex.4) IS SO INCREDIBLE AS TO CREAT A REASONABLE DOUBT AS A MATTER OF LAW.

IN THE EVENT THIS COURT DISAGREE,THE NUMBER OF IMPROPRIETIES AND ERRORS WHICH OCCURRED DURING THE COURSE OF THESE PROCEEDINGS HEREIN THIS INSTANT CASE REQUIRE REVERSAL OF THE JUDGMENT APPEALED FROM AND A REOPENING OF THE CLAIM.

Dated: May 3,1976

Respectfully Submitted

JAMES H. CROUCH, pro se

160 West 97th Street

New York, N.Y. 10025

Pauline Davis

COPY RECEIVED

5/3/76

UNITED STATES ATTORNEY